

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

State of Ohio ex rel. Levert K. Griffin,	:	
Plaintiff,	:	Case No. 2:06-cv-1022
v.	:	Judge Marbley
Geri M. Smith, Clerk, U.S. District Court,	:	Magistrate Judge Abel
and Augustin F. O'Neil, Esq,	:	
Defendants.	:	

Order

Plaintiff brings this petition for a writ of mandamus, initially filed in the Ohio Supreme Court and removed to this Court pursuant to 28 U.S.C §1442 and §1446. This matter is before the Court on Magistrate Judge Abel's March 5, 2007 Report and Recommendation that Defendant Geri M. Smith's December 13, 2006 motion to dismiss (doc.5) and her January 30, 2007 renewed motion to dismiss (doc. 11) be granted. No objections have been filed to the Report and Recommendation.

Upon *de novo* review as required by 28 U.S.C. § 636(b)(1)(B), the Court ADOPTS the Report and Recommendation. Plaintiff sought a writ of mandamus from the Supreme Court of Ohio against Defendant Smith in her official capacity as the Clerk of Courts for the Northern District of Ohio. As the Magistrate Judge held, a state court does not have jurisdiction to issue a writ of mandamus to a federal officer. *M'Clung v. Silliman*, 19 U.S. 598, 603 (1821); *Ex parte Shockley*, 17 F.2d 133, 137 (N.D. Ohio). Since the Supreme Court was without jurisdiction, this Court also lacks jurisdiction to hear this case. Accordingly, Defendant Geri M. Smith's December 13, 2006 motion to dismiss (doc.5) and her January 30, 2007 renewed motion to

dismiss (doc. 11) are GRANTED. Defendant Geri M. Smith is DISMISSED from this lawsuit.

s/Algenon L. Marbley
Algenon M. Marbley
United States District Judge